

#31 Reg for refund
09-17-03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE



In re Application of: Tedesco et al.

Examiner: Myhre, James W.

Serial No.: 09/100,684

Group Art Unit: 3622

Filing Date: June 19, 1998

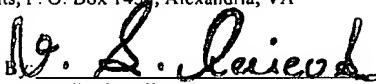
Attorney Docket No: 98-019

For: BILLING STATEMENT
CUSTOMER ACQUISITION
SYSTEM

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Dated: August 15, 2003 By: 
Veronika S. Leliever

Box : Refund Section
Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

PETITION TO REQUEST REFUND OF RCE FEE

Dear Examiner:

1. Petition Request

The Office Action mailed July 24, 2001 (Paper No. 16) was improperly made final. Applicants accordingly respectfully request refund of the fee in the amount of \$740.00 for the Request for Continued Examination filed on January 24, 2002.

Specifically, the rejection of independent claims 1, 11 - 13 and 22 in the Final Office Action were made on newly cited art. Accordingly, that Office Action should not have been made final.

2. Applicable Rules

An action will not be made final if it includes a rejection, on newly cited art (other than information submitted in an information disclosure statement filed under 37 C.F.R. 1.97(c)), of any claim not amended by Applicant. MPEP 706.07(a). Such a rejection on newly cited art may not be made final even if other claims were amended to require newly cited art. MPEP 706.07(a).

3. Facts**Claims 1, 12, 13 and 22 were not amended**

In an Office Action, independent claims 1, 11 - 13 and 22 were rejected as obvious in light of a combination of the McNatt, Linnen and Krauss references. [Office Action mailed November 20, 2000, paper no. 13, pages 3 - 5] Applicants then provided arguments distinguishing these claims from the cited references. [Applicants' Response mailed May 21, 2001, pages 5 - 6] In the same paper, Applicants also amended claim 11 to correct a grammatical error, canceled claims 14 - 21, and added new claim 28. No other claims were amended.

Claims 1, 12, 13 and 22 were then rejected on new art in a Final Office Action

However, the next Office Action was made final without providing any reason. [Office Action mailed July 24, 2001, paper no. 16, page 10] In this Office Action, independent claims 1, 11 - 13 and 22 were rejected as obvious in light of a combination of McNatt, Linnen, Krauss and now Crosskey as well. [Office Action mailed July 24, 2001, paper no. 16, pages 2 - 5] The Crosskey reference is newly cited art; it was not previously used in any rejection, much less the rejection of independent claims 1, 11 - 13 and 22.

Further, an additional new reference (Wall Street Access) was used as a new basis for rejecting some or all of independent claims 1, 11 - 13 and 22. [Office Action mailed July 24, 2001, paper no. 16, page 4, paragraph 1]. This reference was not previously used in any rejection, and was not offered as support of Officially Noted subject matter.

Improper reason for a Final Office Action

The improperly final Office Action (paper no. 16) contains no reasons at all for the conclusion of finality. [Office Action mailed July 24, 2001, paper no. 16, page 10]

Applicants argued that the Office Action (paper no. 16) was improperly made final. [Applicants' response mailed January 24, 2002, page 3]

In response, the Examiner stated:

"The amendment submitted by the Applicant on May 25, 2001 (paper no. 15) added a priority claim to the amendment to pre-date the Krauss reference by several months. ... Since the Applicant's [sic] amendment of the priority of the application necessitated the use of the additional references, the finality of the action was appropriate"

[Office Action mailed Feb. 22, 2002 (paper no. 20), pages 2 - 3]

This statement is not correct. The amendment the Examiner referred to does not add or change the priority claim of the application. That amendment merely updates the application data of the parent application to reflect the U.S. patent number of the parent application. [Office Action mailed July 24, 2001, paper no. 16, last page]

REMARKS

Accordingly, Applicants respectfully request a review of fees paid to date for the above-referenced application and refund of fees paid excessively by crediting Applicants' deposit account no. 50-0271.

Applicants believe no fee is due at this time. Please charge any fees that may be required for this Request, or credit any overpayment to Deposit Account No. 50-0271. Order number 98-019. The Assistant Commissioner is further authorized to charge any additional fees which may be required for the submission of this paper, or credit any overpayment to Deposit Account No. 50-0271.

Furthermore, should an extension of time be required, please grant any extension of time which may be required to make this submission timely, and charge any fee for such an extension to Deposit Account No. 50-0271. A duplicate copy of this authorization is enclosed for such purposes.

Respectfully submitted,



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TRANSMITTAL LETTER
(General - Patent Pending)

Docket No. 307
98-019

In Re Application Of: TEDESCO et al.

Serial No.	Filing Date	Examiner	Group Art Unit
09/100,684	June 19, 1998	Myhre, James W.	3622

Title:

BILLING STATEMENT CUSTOMER ACQUISITION SYSTEM



TO THE COMMISSIONER FOR PATENTS:

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Petition to Request Refund of RCE Fee, 3 pp.; and
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in the above identified application.

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 The Director is hereby authorized to charge and credit Deposit Account No. 50-0271
as described below.
 Charge the amount of _____
 Credit any overpayment.
 Charge any additional fee required.

Signature

Dated: August 15, 2003

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